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COUNSEL FOR SAVAGE COMMUNICATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff, - vs. - NEW DESTINY INTERNET GROUP, *et al.*, Defendants.	Case No. C 05-01114 JW (HRL) MDL NO. 1665 **DEFENDANT SAVAGE COMMUNICATIONS, INC.'S PROPOSED TERMS FOR RECONSIDERATION AND PRELIMINARY CONSTRUCTIONS (PATENT L.4. 4-1 AND 4-2)**
AND ALL RELATED AND/OR CONSOLIDATED CASE ACTIONS	

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In accordance with the Court's order dated June 21, 2005, and the order dated June 27, 2005, defendant SAVAGE COMMUNICATIONS, INC. ("Savage") hereby submits its Proposed Terms for Reconsideration and Preliminary Constructions.

Savage proposes that the Court should reconsider its construction of the term "remote locations," and should construe that term to mean "positions or sites distant in space from the requesting location" for the reasons set forth in detail in the Memorandum of Law and Fact in Support of Reconsideration of the Court's Construction of the Term "Remote Locations" filed on July 28, 2005 ("Memorandum"), which Savage incorporates herein by reference. As explained in the Memorandum, Savage proposes construction of "remote locations" follows from the claims, specification, and prosecution history of U.S. Patent No. 5,132,992, as well as the prosecution history of the related U.S. Patent No. 6,002,720, and thus Savage does not rely on extrinsic evidence.[1] Savage does, however, reserve the right to present extrinsic evidence in order to rebut any arguments or evidence that plaintiff Acacia Media Technologies Corp. ("Acacia") may present in opposition to the Memorandum.

Savage does not intend to ask the Court to reconsider any of the other terms that the Court construed in its July 12, 2004 order. Savage understands that Acacia intends to ask the Court to reconsider the terms "transmission system," including the phrase "transmission system at a first location;" "reception system at a second location;" "sequence encoder;" "identification encoder;" and "in data communication with." Savage, however, agrees with the Court's construction of those terms in its July 12, 2004 order for the reasons stated in that order. Savage does not intend to introduce any additional extrinsic evidence in support of the Court's constructions, but, again, reserves the right to present such evidence in order to rebut any arguments or evidence that Acacia may present in connection with its motion(s) for reconsideration of those terms.

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[1] The prosecution history of the '720 patent is intrinsic evidence for the construction of the terms of the '992 patent. *See, e.g., Laitram Corp. v. Morehouse Indus.*, 143 F.3d 1456, 1460 n.2 (Fed. Cir. 1998) ("We refer to the 'prosecution history' [of two patents stemming from the same parent application] without reference to the patent to which it pertains. . . ."). But to the extent that Acacia contends that the '720 prosecution history is extrinsic evidence in spite of Federal Circuit authority to the contrary, or that any of the other documents attached as exhibits to the declaration of Jeffrey H. Dean—namely, the other patents in the Yurt family of patents, and certain references cited in, and therefore part of, the '992 and '720 prosecution histories—are extrinsic evidence, Savage hereby "identifies" those documents pursuant to Patent L.R. 4-2(b).

DATED: August 30, 2005

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